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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

VERONICA W.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE  
COUNTY,

Respondent,

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Real Party in Interest.

F063912

(Super. Ct. No. JJV064901)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charlotte Wittig, Commissioner.

Veronica W., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Carol E. Holding, Deputy County Counsel, for Real Party in Interest.

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\* Before Wiseman, Acting P.J., Detjen, J. and Franson, J.

Veronica, in propria persona, seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 12-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing as to her daughter, Lily. We deny the petition.

### **FACTUAL AND PROCEDURAL SUMMARY**

On August 16, 2010, social worker Melissa Urena from the Tulare County Health and Human Services Agency (agency) and Agent S. Brown from the Visalia Police Department responded to a report of suspected child abuse at Central Valley Regional Center (CVRC). There they observed then 21-month-old Lily with multiple bruises on her face and body in varying degrees of healing. Lily had facial bruising along her left hairline, temple, ear and cheek and along the right side of her face above the jaw and trailing down her neck. She also had bruises on her back, hip and buttocks, a bald spot on the back of her head and two chipped front teeth.

Veronica stated that she and Lily lived with her brother, Ronald, his wife, Audra, and their three children, ages six, three and 20 months. She said she is Lily's primary caregiver but that Ronald and Audra help her care for Lily. On Friday, August 13, 2010, she left Lily in Ronald and Audra's care over the weekend. When she left, Lily did not have any bruises. Veronica returned on the evening of August 15, after Lily was already in bed. Veronica did not see her until the next morning. When she saw the bruises, she thought Lily fell. She said a couple of weeks previously, Lily fell into the "decorative fireplace," resulting in a bruise and chipped teeth. Veronica also said that Lily was not very stable and fell frequently. She said Lily does not have the ability to catch herself or break her falls so she fell flat on her face and head. In addition, Lily's older cousins are rough with her. They climb on couches and chairs and Lily tries to keep up with them but cannot.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Veronica denied that she or anyone else in the household had difficulty controlling their anger and said she disciplined Lily by placing her in time-out. She said Ronald used the same disciplinary method with his children.

Veronica also told the social worker that she had been diagnosed with bipolar disorder for which she took medication. She said Lily's only medical condition was an eye condition in which her eye turned inward. She said their family doctor had referred Lily to an eye specialist. Veronica identified Richard A. as Lily's father. Richard was institutionalized for mental incompetence.

Agent Brown concluded Lily's bruising was not accidental or consistent with normal, everyday play and authorized Ms. Urena to take Lily into protective custody. Lily was evaluated at the emergency room where a brain scan and bone survey were conducted. The brain scan was unremarkable and no fractures were identified on the bone survey. The emergency room physician's clinical impression was that Lily was physically abused. He discharged her to foster care with instructions to follow up with a primary care physician.

Dr. David Sine, Child Abuse Expert, also evaluated Lily. He concluded that she had been beaten on more than three occasions. He noted that the bruising to her ear was "significant enough for G.B.I. [great bodily injury]."

The day after Lily's removal, Veronica and Audra met with agency staff. Audra showed Ms. Urena a picture of the fireplace where she said Lily fell and was injured. She could not explain, however, how all of Lily's injuries could have been caused by the one fall and could only surmise it was the result of "rough play" among the cousins.

The social worker also spoke to Veronica's mother, Pam, who resides in Texas. Pam and her husband, both nurses, moved from Visalia to Texas in 2010. Prior to that, the entire family, including Veronica and Lily, lived in a large house in Visalia. Pam told the social worker that she never witnessed Veronica act aggressively with Lily or anyone else. She said she was sure Lily was injured while playing with her cousins. She also

stated that she and her husband wanted Veronica and Lily to move to Texas so the family could care for Lily and help Veronica reunify with her. She said Veronica had planned to relocate to Texas before the agency intervened.

Following its investigation, the agency filed a dependency petition on Lily's behalf alleging one count under section 300, subdivision (a) (serious physical harm) that Veronica physically abused her. The agency further alleged two counts under subdivision (b) (failure to protect). Count (b)(1) alleged that Veronica failed to protect Lily from the physical abuse of Ronald and Audra and count (b)(2) alleged that Veronica's mental illness placed Lily at a substantial risk of serious physical harm. The agency also alleged that Veronica subjected Lily to an act of cruelty (§ 300, subd. (i)) and that Richard left Lily without provision for support (§ 300, subd. (g)).

The juvenile court ordered Lily detained pursuant to the petition and, in September 2010, convened the jurisdictional hearing. Veronica's attorney, Adam Baiza, asked the juvenile court to appoint a guardian ad litem (GAL) for Veronica. He said that while reviewing the appeal rights and waiver of rights form with Veronica, he concluded that she did not understand the matter. In addition, she and Ronald stated they wanted another attorney to represent her. Rather than appoint a GAL at that time, the juvenile court ordered Veronica and Richard to undergo competency evaluations and set a competency hearing.

Elizabeth Gates, Ph.D., evaluated Veronica's competency in October 2010. Veronica told Dr. Gates that her attorney got mad at her because she would not waive her trial rights. She said she did not trust him and she and her family wanted a trial.

Dr. Gates concluded that Veronica had insight into her mental illness and was mentally stable and medication compliant. In addition, she had adequate intellectual function, demonstrated good knowledge of the proceedings and was able to cooperate with counsel in a rational manner.

In October 2010, the juvenile court convened the competency hearing but continued it. The court appointed new counsel, Mary Rogers, to represent Veronica. Ms. Rogers withdrew the request for a GAL.

In December 2010, the juvenile court conducted a *Marsden*<sup>2</sup> hearing at Veronica's request followed by a contested jurisdictional hearing. During the *Marsden* hearing, Veronica informed the juvenile court that Ms. Rogers did not return her calls and that they disagreed on trial strategy. Ms. Rogers explained that Veronica had given her consent to discuss the case with Pam and that Pam wanted various witnesses to be called, including a nurse who could discredit Dr. Sine. However, Ms. Rogers had advised Veronica to plead no contest because there was a criminal case pending. Ms. Rogers said she was not prepared to proceed with the jurisdictional hearing if Veronica wanted to call witnesses. Following its inquiry, the juvenile court denied Veronica's request for a new attorney, explaining to Veronica that Ms. Rogers fulfilled her duty in trying to contact Veronica and that a disagreement on trial strategy was an insufficient basis for appointing new counsel. The juvenile court concluded the *Marsden* hearing and conducted the contested jurisdictional hearing that same day.

Veronica testified and denied ever striking Lily with her hand or any object that would cause bruising. She also denied seeing Ronald or Audra strike Lily or seeing their children hit, shove or push Lily down. She said she disciplined Lily by placing her in time-out. She never used her hand to spank her and she did not "swat" her with anything. She testified that Lily sustained the bruise on the left side of her face and down her neck by falling into a decorative fireplace in Ronald's bedroom where she was playing with her one-and-a-half-year-old cousin. She did not observe Lily fall but Ronald and Audra did. She said this occurred two or three days before August 13, 2010. She said Lily sustained the other bruises from playing and falling.

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<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

Veronica further testified that their family physician, Dr. Varma, referred Lily to an eye specialist sometime in 2010 prior to Lily's detention. Veronica had taken Lily to Dr. Varma after noticing that Lily fell easily, bumped into things and held objects close to her face to see them. The eye specialist referred Lily back to Dr. Varma because, according to Veronica, the specialist did not treat children. Following her detention, Lily was evaluated by an eye specialist and was prescribed glasses.

Following Veronica's testimony, county counsel argued that Lily's extensive bruising and the bald spot on her head could not be explained by the one fall into the fireplace. County counsel also referred the juvenile court to Dr. Sine's opinion that Lily was injured nonaccidentally on three occasions. Ms. Rogers argued that Lily was never physically abused but rather had a vision problem that caused her to fall, resulting in bruising. Lily's attorney joined in county counsel's argument.

Following argument, the juvenile court sustained the dependency petition on the section 300, subdivision (a)(1) and (b)(1) allegations only. The court also issued dispositional orders, removing Lily from Veronica's custody and ordering a plan of reunification. Veronica's plan required her to complete a parenting course, participate in mental health services and participate in a child abuse intervention program. The court also ordered two-hour weekly visitation and set the six-month review hearing for June 2011. Veronica did not appeal from the juvenile court's dispositional orders.

In May 2011, the agency filed its report for the six-month review hearing, recommending that the juvenile court return Lily to Veronica's custody under family maintenance. The agency reported that Veronica was complying with her court-ordered services and regularly visiting Lily. Overall, visitation went well, however, Lily cried a lot and Veronica, at times, became frustrated. Veronica told the social worker that she wanted to move to Texas so that her family could help her as she no longer had any family in Tulare County.

The agency further reported that Lily had developmental and speech delays for which she was receiving services at CVRC. In addition, the agency reported that Lily had a history of seizures based on Veronica's statement that Lily had a possible seizure in June or July of 2010. Additionally, Lily had just been placed in her second foster home in late May 2011.

In June 2011, the juvenile court convened the six-month review hearing but continued it and set it for a contested hearing at the request of Lily's attorney. Two weeks later, the agency filed a report, changing its recommendation and asking the juvenile court to maintain Lily in foster care and continue services to the 12-month review hearing and, in the interim, transition to unsupervised and overnight visitation. The agency's revised recommendation was based on concerns expressed by Lily's attorney that Veronica would have difficulty caring for Lily by herself given Lily's developmental delays.

In mid-June 2011, the juvenile court conducted the six-month review hearing. Ms. Rogers informed the juvenile court that she and Veronica did not oppose the agency's change in recommendation. The court amended Veronica's reunification plan, requiring her to participate in Lily's CVRC services and continued reunification services to the 12-month review hearing, which it set for November 2011. In August 2011, Lily was placed in a third foster home.

In November 2011, the agency filed its report for the 12-month review hearing and recommended the juvenile court terminate Veronica's reunification services. The agency's recommendation was based on its conclusion that Veronica was not capable of effectively parenting Lily, properly engaging her or bonding with her. The agency reported that Veronica refused to participate in CVRC services and faulted her for transmitting lice to Lily, which impacted their ability to participate in her services. The agency also determined that Veronica was negligent and irresponsible because she dropped a lit cigarette in her purse causing it to burn. The agency also reported that

Veronica wanted Lily placed with Pam in Texas but that Pam was not approved for placement for reasons the agency did not specify. At the same time, the adoption social worker was recommending adoption and the care provider was willing to adopt.

In a series of addendum reports filed for the 12-month review hearing, the agency informed the juvenile court about Veronica's conduct during visitation and lack of participation in the child abuse intervention program. According to one report, Veronica reacted inappropriately during a visit after being told of the agency's recommendation to terminate reunification services. Veronica left the visitation room twice, the second time harshly telling Lily to get out of her way. She returned to the visitation room upset and demanded to know why she could not tell Lily "what they were trying to do to her." When Veronica was told the visit would be terminated if her behavior continued, she left the room angrily, calling the social worker a "f\*\*\*ing bitch." She returned and completed the visit but was very impatient with Lily. She left the facility without acknowledging the foster parent or Lily. Lily was extremely agitated while being placed in the foster parent's vehicle and later at the foster home.

In another addendum report, the agency reported that Veronica attended 32 weeks of the child abuse intervention program but, according to the program manager, did not appear to benefit from the program. She was detached from the group process, was passive-aggressive during group sessions and was unable to utilize basic anger management skills. She lacked insight into the behaviors that led to her referral for services and showed no ability to empathize with her victim. The program manager said that Veronica would be removed from the program if she did not show more progress after another two months. The agency also received information from Veronica's therapist that she had not contacted him since October 2011, for therapy. During her last telephone contact with her therapist, Veronica "cussed him out" for not returning her calls.

Prior to the hearing, the agency also provided the juvenile court letters from Veronica and Pam, addressing various concerns raised by the agency.

In December 2011, the juvenile court conducted the contested 12-month review hearing. Veronica appeared represented by Ms. Rogers.

Social worker Patricia Tounkara testified that Veronica visited Lily twice a week for a total of four hours. She said she did not believe that Lily was bonding with Veronica but acknowledged that some of the visits were positive. She said she never arranged unsupervised or overnight visits because Veronica was not progressing in her child abuse classes.

Ms. Tounkara also testified about the lice infestation. She said that Veronica was unable to participate in Lily's services in September and October 2010, because she had head lice. Another concern was that Veronica relied too heavily on Pam to help her make decisions. Ms. Tounkara was concerned that Veronica did not have a local support system and would not be able to adequately care for Lily if Lily were returned to her care. Ms. Tounkara also testified that Veronica had not internalized the parenting skills she was taught as evidenced by her inability to sooth Lily or communicate with her properly. She said that Veronica communicated with Lily as though Lily were an adult.

Veronica testified that she treated herself for head lice and that she was able to eliminate it after two to three weeks. She also explained how her purse caught on fire. She said that the person who drove her to Lily's school for a meeting was smoking a cigarette and the lit end of the cigarette fell into her purse without her knowledge. She was not aware of it until it was pointed out to her later.

During argument, county counsel asked the juvenile court to terminate Veronica's reunification services based on her failure to make substantive progress, most notably in the child abuse intervention program. Lily's attorney joined in county counsel's argument and asked the juvenile court to find that visitation was detrimental and suspend it. Ms. Rogers argued that explainable circumstances prevented Veronica from fully

complying with her services plan and that she otherwise substantially complied. She asked the juvenile court to continue services.

The juvenile court found that Veronica did not participate in all of her services or benefit from them, specifically citing her decision to discontinue contact with her therapist. The juvenile court also stated that Veronica had not taken responsibility for Lily's condition and did not appear to understand why the court was involved. Consequently, the juvenile court terminated Veronica's reunification services and set a section 366.26 hearing. The juvenile court also terminated visitation for Veronica but ordered supervised visits for Pam in Tulare County. This petition ensued.

### **DISCUSSION**

Veronica contends trial counsel was ineffective for not defending her against the agency's allegations of child abuse. She sets forth trial counsel's error in the following paragraph from her writ petition: "My case was never adequately presented. Severe abuse was alleged but never challenged or proven. Only a doctor's unsubstantiated report with no pictures taken by him. [*Sic.*] No one could ever state under oath that I inflicted any injuries to my daughter, which I did not."<sup>3</sup> Through her writ petition, she hopes to present her version of the facts. By way of relief, Veronica seeks Lily's return to her custody or alternatively, continuing reunification services and visitation.

Turning to the merits, Veronica's claim of ineffective assistance of counsel fails for at least two fundamental reasons: Veronica waived her right to challenge the juvenile court's finding of child abuse by failing to raise it on a timely appeal and she has failed to show how she was prejudiced by trial counsel's presentation of her case.

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<sup>3</sup> Real party in interest asks this court to dismiss the writ petition as facially inadequate because Veronica did not comply with California Rules of Court, 8.452(c) (rule) by including a statement of facts and points and authorities. In accordance with rule 8.452(a), we liberally construe a writ petition where, as here, a cognizable issue is raised and will review the petition on its merits.

Veronica does not specify when in the proceedings trial counsel was ineffective. Nevertheless, her contention that trial counsel did not defend her against the allegations of child abuse leads this court to conclude she is referring to the jurisdictional hearing and the juvenile court's jurisdictional finding that Veronica physically abused Lily, causing her "serious physical harm" pursuant to section 300, subdivision (a).

In dependency proceedings, the dispositional order is the appealable judgment. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 (*Meranda P.*)). The juvenile court's jurisdictional findings are appealable from the dispositional order. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950.) "[A]n unappealed disposition ... order is final and binding and may not be attacked on an appeal from a later appealable order. [Citations.]" (*Meranda P.*, supra, 56 Cal.App.4th at p. 1150.) This "waiver rule" applies even where, as here, the issue raised concerns the effectiveness of trial counsel. (*Id.* at p. 1151)

In this case, Veronica did not challenge the juvenile court's section 300, subdivision (a) finding on appeal from the juvenile court's dispositional order. Consequently, we conclude that she waived her right to raise a claim of ineffective assistance of counsel.

Even assuming, arguendo, Veronica did not waive her claim of ineffective assistance, we would nevertheless conclude that her contention fails because she did not demonstrate any prejudice from the purported ineffective assistance of counsel.

In order to show ineffective assistance of counsel, a petitioner must prove that trial counsel's performance was deficient, resulting in prejudicial error. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) We need not evaluate counsel's performance if petitioner fails to prove prejudicial error; i.e., absent counsel's errors, there is a reasonable probability of a more favorable outcome. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.) Therefore, to prevail on a claim of ineffective assistance of counsel, Veronica would have to show that but for trial counsel's inadequate presentation of her case, the juvenile court would have dismissed the allegations of child abuse.

Veronica contends that the child abuse allegations were not proven but were based solely on a “doctor’s unsubstantiated report” without pictures. She further contends there was no one who could have testified that she injured Lily. Her contentions are not supported, however, by the facts on the record. There *are* pictures in the appellate record of Lily’s bruises taken on August 16, 2010. Further, Dr. Sine, an expert in child abuse, evaluated Lily and opined that she was physically abused on at least three occasions. Given his expert status and strong opinion, there is no reason to believe he would not have testified if called. Additionally, Veronica admitted to being Lily’s primary caretaker, making her the most likely perpetrator of the abuse. More telling still, she initially told Ms. Urena that Lily had no bruises when she left her with Ronald and Audra on August 13. She testified, however, at the jurisdictional hearing that Lily was injured several days before that when she fell into the fireplace and that bruises were apparent at that time.

In determining whether a child has suffered serious physical harm nonaccidentally pursuant to section 300, subdivision (a) (subdivision (a)), the juvenile court evaluates the evidence by the preponderance of the evidence standard. (§ 355, Cal. Rules of Court, rule 5.684(f).) In light of the evidence of nonaccidental abuse as discussed above, trial counsel would be hard pressed without compelling evidence to the contrary to convince the juvenile court to dismiss a subdivision (a) allegation.

Here, Veronica has failed to show what evidence trial counsel could have but did not present that would have established a cause for Lily’s bruising other than an act of child abuse by Veronica. Having failed to do so, Veronica’s claim of ineffective assistance of counsel must fail. Thus, we find no error.

On a final note, our denial of the writ petition does not preclude Veronica from filing a section 388 petition to modify the juvenile court’s prior order(s) on the grounds that there is new evidence or changed circumstances and modification of the juvenile court’s order(s) would serve Lily’s best interest.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.